

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

**ANTHONY SCOTT,**  
**Plaintiff,**

v.

**PA. DEPT. OF PROBATION AND  
PAROLE BOARD, et al.,  
Defendants.**

**C.A. No. 21-32 Erie**

**District Judge Susan Paradise Baxter**  
**Magistrate Judge Richard A. Lanzillo**

# MEMORANDUM ORDER

Plaintiff Anthony Scott, an inmate incarcerated at the State Correctional Institution at Albion, Pennsylvania, commenced this action by filing a *pro se* civil rights complaint accompanied by a motion for leave to proceed *in forma pauperis* (“ifp motion”) [ECF No. 1], on January 12, 2021. Named as Defendants are the Pennsylvania Department of Probation and Parole Board (“Parole Board”) and Superintendent Clark. Plaintiff claims that Defendant Parole Board violated his Eighth and Fourteenth Amendment rights by denying him parole on January 24, 2000, and that Defendant Clark refused to obtain a copy of his sentencing order for him. This matter was referred to United States Magistrate Judge Richard A. Lanzillo for report and recommendation in accordance with the Magistrates Act, 28 U.S.C. § 636(b)(1), and Rules 72.1.3 and 72.1.4 of the Local Rules for Magistrates.

On July 23, 2021, Magistrate Judge Lanzillo issued a report and recommendation (“R&R”) recommending that Plaintiff’s ifp motion be granted and that this action be dismissed as legally frivolous in accordance with 28 U.S.C. § 1915(e), because Defendant Parole Board is immune from suit under the Eleventh Amendment and Plaintiff’s claim against Defendant Clark

fails to state a claim upon which relief may be granted [ECF No. 6]. Nonetheless, Judge Lanzillo recommends that this action be dismissed without prejudice to Plaintiff's right to amend his complaint to state a cognizable claim. No timely objections have been filed.

After de novo review of the complaint, together with the report and recommendation, the following order is entered:

AND NOW, this 13th day of August, 2021;

IT IS HEREBY ORDERED that the report and recommendation of Magistrate Judge Lanzillo, issued July 23, 2021 [ECF No. 6], is adopted as the opinion of the Court, and this case is DISMISSED as frivolous pursuant to 28 U.S.C. § 1915(e), without prejudice to Plaintiff's right to amend his complaint to state a cognizable claim in accordance with the parameters outlined in the R&R. If he desires to do so, Plaintiff must file his amended complaint within thirty (30) days of the date of this Order. Plaintiff's failure to file an amendment within such time shall result in dismissal of this action in its entirety, with prejudice, without further notice.

  
SUSAN PARADISE BAXTER  
United States District Judge

cc: The Honorable Richard A. Lanzillo  
U.S. Magistrate Judge

all parties of record